THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16765 OF 2006

14th AUGUST, 2006

BETWEEN

A.Kalavathi and others

… Petitioner

vs.

Special Chief Secretary to Government, Government of A.P., Secretariat, Hyderabad and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16765 OF 2006

ORDER:

The petitioners are residents of Badangpet village of Saroornagar Mandal of Ranga Reddy District. The petitioners 1 to 4 are owners of land admeasuring Acs.20.31 guntas in survey Nos.122, 134 and 135, whereas petitioners 5 and 6 on one hand and petitioners 7 to 10 on the other hand own fifty per cent each in the land admeasuring Acs.67.17 guntas in survey Nos.127 to 131 of Badangpet village. The Government of Andhra Pradesh issued notification under Section 4(1) of the Land Acquisition Act, 1894 (the Act, for brevity) proposing to acquire an extent of Acs.216.00 in various survey numbers of Badangpet village for public purpose, namely, Devathalagutta Rifle Range for DMRL. The notification issued vide G.O.Ms.No.722, dated 19.06.2006, under Section 4(1) of the Act was published in A.P.Gazette, dated 06.07.2006. The Government thought it fit to dispense with enquiry under Section 5-A of the Act and accordingly exercised its power under Section 17(4) of the Act in dispensing with the enquiry. The declaration under Section 6 of the Act was published in A.P.Gazette on 07.07.2006 in pursuance of

which the second respondent issued notice, dated 26.07.2006, under Sections 9(3) and 10 of the Act. The petitioners who claimed to be owners of land comprised in survey Nos.127 to 131 and 122, 134 and 135 filed the present writ petition assailing the notification under Section 4(1) of the Act as well as notices issued under Sections 9(1) and 10(3) of the Act.

Learned counsel for the petitioners contends that the exercise of power under Section 17(4) of the Act in dispensing with the enquiry under Section 5-A of the Act is vitiated by non-application of mind and is bad. He submits that the first respondent arrived at subject to satisfaction to dispense with the enquiry without therebeing any material before him and therefore, the same is liable to be set aside. He placed reliance on the decision of the Supreme Court in **Union of India v Mukesh Hans**[1]. Secondly, he submits that there is plenty of alternative land available for establishing rifle range for DMRL and therefore, there is no necessity to acquire private lands. Lastly, he submits that the issue of notice under Sections 9(3) and 10 of the Act simultaneously with declaration under Section 6 of the Act is illegal.

This Court has considered the submissions made by the learned counsel for the petitioner carefully. The submission that the issue of notices under Sections 9(1) and 10, and 9(3) and 10 simultaneously does not vitiate the proceedings. Be it noted, under Section 9(1) of the Act the Collector, i.e., Land Acquisition Officer, is required to cause public notice to be given at convenient places near the land, which is to be taken possession and notice under Section 9(3) of the Act is required to be given to the occupier of the land, who resides within the Districts, where the land is situated. The purpose of notice under Section 9(1) of the Act is different from the purpose, for which notice is issued under Section 9(3) of the Act. Therefore, there is no necessity to issue notices one after the other and no illegality can be there even if the notices are sent simultaneously to the owner/occupier of the land.

In **Janapareddy Venkateswara Rao v District Collector, Eluru**[2] (supra), a notification under Section 4(1) of the Act for acquiring land for providing house sites to weaker sections like Dalits and other backward classes by invoking the urgency clause under Section 17(4) of the Act, was challenged. It was urged that there was no urgency to invoke Section 17(4) of the Act. This Court referred to **Chameli Singh v State of U.P.,**[3] and **Union of India v Praveen Gupta**[4], and observed that there is always an element of urgency when the Government take steps for providing house sites to solve the housing problem of those belonging to weaker sections. This Court

made the following observations.

> …The Judgments of the Supreme Court in **Chameli Singh v State of U.P** (supra), and **Union of India v Praveen Gupta (**surpa) are the authorities to State that when the State proceed to acquire the land for providing house sites to the weaker sections of the society, there is always an element of urgency and that urgency would subsist till the housing problem of those sections of community is solved. Added to this, the Supreme Court in **Union of India v Praveen Gupta (**supra) opined that the decisions of the Government on the question of urgency is an administrative decision and a matter of subjective satisfaction, and the Government need not referred reasons in reaching the satisfaction, and that satisfaction cannot lightly be interfered with by the Court unless in a given case, it is shown that the exercise of eminent domain power is nothing short of colourable exercise of power.

Whether the exercise of power by the first respondent under Section 17(4) of the Act dispensing with the enquiry 5-A of the Act is proper? The submission is that enquiry under Section 5-A of the Act affords an opportunity to the owner of the land to raise all objections and the same is denied in the routine manner without therebeing subject to satisfaction the acquisition would be rendered illegal. It is now very well settled that Section 5-A of the Act gives a valuable right to the owner of the land to raise objection that the acquisition of the land is not in accordance with the procedure laid down by the law by raising different grounds. Therefore, unless State or competent authority considers all the materials and is satisfied that there is urgency to invoke Section 17(4) of the Act, ordinarily enquiry under Section 5-A of the Act cannot be dispensed with. In the present case, the land is sought to be acquired for the purpose of rifle range for DMRL. There is no denial that Defence Metallurgical Research Laboratories (DMRL) is a prime and pioneering research and production facility of Government of India serving various defence needs of Indian Army. The products designed and developed by DMRL require testing facilities and there can never be any doubt that any purpose to aid defence of the country cannot be delayed. There is always urgency in defence matters and therefore, the purpose for which the land is to be acquired is an urgent purpose. Learned counsel for the petitioner relied on **Union of India v Mukesh Hans** (supra), in support of the contention that there was no material before the first respondent to come to conclusion that there is urgency for invoking Section 17(4) of the Act. The submission cannot be accepted. When the highest authority of the Government of the State

considers material placed before it, and on subject to satisfaction decides to dispense with the enquiry under Section
5-A of the Act, an argument that there was no material before the authority cannot be heard. There is always presumption that all the Government actions are taken legitimately for valid purpose in accordance with law. On mere conjunctures or unsubstantiated allegations, inference cannot be drawn that there was no material before the first respondent.

The writ petition is misconceived and is accordingly dismissed.

(V.V.S.RAO,J)

14.08.2006
pln

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[1] (2004) 8 SCC 14 = AIR 2004 SC 4307

[2] 1999(3) ALD 42

[3] (1996) 2 SCC 549

[4] (1997) 9 SCC 78